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CATERPILLAR INC
PATENT DEPARTMENT AB6490
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**OFFICE OF PETITIONS
AND APPEALS**

In re Reissue Application of
Shinogle et al. :
Application No. 09/322,770 : DECISION GRANTING
Filed: May 28, 1999 : PETITION
Original Patent No.: 5,634,448 :
Issue Date: June 3, 1997 :
Attny Dckt No. 87-146-R :

This is a decision on the petition filed under 37 CFR 1.182 on November 2, 1999, and resubmitted on October 10, 2000, which is being treated as a petition under 37 CFR 1.183 requesting that the delay in filing the temporary drawings required by 37 CFR 1.174 be excused, and, as such, the above-identified reissue application be accorded a filing date of May 28, 1999.

The petition is granted.

This application was deposited on May 28, 1999, as an application for reissue of U.S. Patent No. 5,634,448. The filing included a request to transfer the drawings from the original patent, but did not, *inter alia*, include the temporary drawings required by 37 CFR 1.174. On June 22, 1999, the Office of Initial Patent Examination (OIPE) mailed a "Notice" indicating that the above-identified application was incomplete as lacking drawings required under 35 USC 113 and, as such, was not entitled to a filing date, and further stated that the filing date would be the date of receipt of the omitted drawing. On the same date, another Notice was mailed which indicated that the declaration of record did not execute the item(s) indicated as missing on the aforementioned Notice.

In response, on November 2, 1999, the present petition was filed under 37 CFR 1.182, along with 7 sheets of drawings and a petition for a four month extension of time. Petitioner agrees that the drawings were inadvertently not filed initially, but points to the request, present on filing, to transfer the original drawings from the patented file to the instant reissue

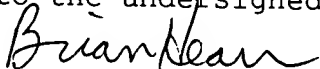
application. Inspection of this file reveals that at least one method claim was present on filing. It has long been PTO policy that, as here, when an application presents at least one method claim, a drawing is usually not required for purposes of obtaining a filing date within the meaning of 35 USC 113. See MPEP 601.01(f). Rather, in an instance such as herein, OIPE should have accorded this application a filing date of May 28, 1999, but mailed a Notice of Omitted Items. See MPEP 601.01(d), (g). As such the Notices mailed June 22, 1999 were mailed in error, and are vacated.

Under the practice of MPEP 601.01(d), (g), an applicant is permitted to retain the original filing date, and cancel any reference(s) to the omitted item(s), or retain the original filing date by proving that the omitted item(s) was in fact received, or submit the missing item(s) and accept the date of submission of the omitted item(s) as the filing date. However, under the circumstances of this reissue application, (1) as the omitted drawings were a matter of public record in the patented file on the date this reissue application was filed, (2) as applicant requested, on filing, transfer of the drawings from the patented file to this application, and (3) as at least one method claim was present on filing, it is evident that the failure to also herein provide a temporary copy of the drawings does not raise any question of the introduction of new matter. As such, on petition, applicant's delay in providing the temporary drawings required by 37 CFR 1.174, that were not filed until November 21, 1999, is excused, and this reissue application is entitled to a filing date of May 28, 1999.

As the petition was necessitated by applicant's filing error, the \$130 petition fee will not be excused.

This reissue application is being returned to OIPE for further processing with a filing date of May 28, 1999, and an indication that seven sheets of drawings were present on filing, using the temporary drawings filed November 2, 1999.

Telephone inquiries related to this decision should be addressed to the undersigned at (703) 305-1820.



Brian Hearn
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy